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OFFICE OF PETITIONS

In re Application of Bantz et al. :
Application No. 09/852,110 :
Filing Date: May 9, 2001 :
Attorney Docket No. YOR920010328US1 :

Decision on Petition

This is a decision on the petition under 37 CFR 1.181, filed February 2, 2007, to withdraw the holding of abandonment.

The petition is **granted**.

Facts:

A Request for Continued Examination and submission were mailed November 28, 2005.

The Office mailed an Office action on February 9, 2006. The first page of the Office action stated, "This action is non-final." Page 15 of the Office action stated the action was a final Office action.

The Image File Wrapper from the application contains an annotation associated with the Office action mailed February 9, 2006. The annotation states, "application counted as final, office action states non-final."

On April 4, 2006, attorney Peter Manzo spoke with the examiner to clarify the nature of the Office action. Attorney Manzo's declaration states the examiner informed Manzo the Office action was a non-final Office action.

Legal Assistant Monica Gomez spoke with the examiner several times during April of 2006. In addition to a declaration reciting Ms. Gomez's recollection of events, petitioner has submitted a copy of a memorandum Ms. Gomez prudently prepared April 21, 2006, to be placed in the file.

At the time the memorandum was typed, events would have been fresh in Ms. Gomez's mind. Therefore, the memorandum will be given significant evidentiary weight.

The April 21, 2006 memorandum stated, with emphasis in the original,

Per my conversation with Examiner Myriam Pierre on 4/13/06, ... the examiner stated the office action is **NON-FINAL**. I informed her [attorney Manzo] would like to have the office action reissued with a new mailing date. She stated she would have to discuss the matter with her supervisor. On 4/19/06, Examiner Pierre called and stated that she still does not have an answer regarding the re-issue of the non-final Office action. On 4/21/06, I called Examiner Pierre and informed her that after today I will be on vacation and will not return until 05/01/06, and I asked her to please contact Peter Manzo with a status.

A response to the Office action was filed May 8, 2006. The response stated in part,

During the [April 4, 2006] teleconference, the Examiner and Applicants' representative discussed the finality of the Office action dated February 9, 2006.... Examiner Pierre confirmed during the teleconference that the action is non-final.

On May 19, 2006, the Office mailed an Advisory action. The Advisory Action stated,

The reply was filed after a final rejection....

The limitation "comparing the transcription ... introduces new features which alter the scope of the claim and would require a further search and/or consideration.

On June 15, 2006, paralegal Dell Whitton left a voice message for the examiner. Whitton stated the Advisory Action appeared to be erroneous since a "final" Office action had not been mailed. Whitton states he did not receive a return phone call.

On June 28, 2006, Whitton left another phone message with the examiner. Whitton states his call was not returned.

On July 5, 2006, Whitton called and spoke with the examiner. Per Whitton, the examiner, "stated there was nothing the Firm needed to do and the Firm should wait until a new action is mailed."

A Notice of Abandonment was mailed January 3, 2007.

The instant petition was filed February 2, 2007.

Discussion:

After consideration of all the facts and circumstances, the Office has determined the holding of abandonment was improper.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Technology Center Art Unit 2626 will be informed of the instant decision. Thereafter, the examiner will treat the May 8, 2006 as a timely response to a non-final Office action.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

A handwritten signature in black ink, appearing to read 'C. Brantley', is positioned above the typed name.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions